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RICHARD KNAEBLE

**IN THE UNITED STATES DISTRICT COURT,
DISTRICT OF ARIZONA**

RICHARD KNAEBLE,)	Case No.:
)	
Plaintiff,)	COMPLAINT AND DEMAND FOR
)	JURY TRIAL
vs.)	
)	(Unlawful Debt Collection Practices)
BRACHFELD & ASSOCIATES,)	
)	
)	
Defendant.)	

COMPLAINT

RICHARD KNAEBLE (Plaintiff), by his attorneys, KROHN & MOSS, LTD.,
alleges the following against IC SYSTEMS (Defendant):

INTRODUCTION

1. Count I of Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, *15 U.S.C. 1692 et seq.* (FDCPA). According to the FDCPA, the United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal

1 bankruptcies, to marital instability, to the loss of jobs, and to invasions of
 2 individual privacy. Congress wrote the FDCPA to eliminate abusive debt
 3 collection practices by debt collectors, to insure that those debt collectors who
 4 refrain from using abusive debt collection practices are not competitively
 5 disadvantaged, and to promote consistent State action to protect consumers
 6 against debt collection abuses. *15 U.S.C. 1692(a) – (e)*.

- 7 2. Plaintiff brings this action to challenge Defendant's actions with regard to
 8 attempts by Defendant, a debt collector, to unlawfully and abusively collect a debt
 9 allegedly owed by Plaintiff, and this conduct caused Plaintiff damages.
- 10 3. Defendant acted through its agents, employees, officers, members, directors,
 11 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives,
 12 and insurers.

13 **JURISDICTION AND VENUE**

- 14 4. Jurisdiction of this court arises pursuant to *15 U.S.C. 1692k(d)*, which states that
 15 such actions may be brought and heard before "any appropriate United States
 16 district court without regard to the amount in controversy" and *28 U.S.C. 1367*
 17 grants this court supplemental jurisdiction over the state claims contained therein.
- 18 5. Because Defendant maintains a business office and conducts business in the state
 19 of California, personal jurisdiction is established.
- 20 6. Venue is proper pursuant to *28 U.S.C. 1391(b)(1)*.
- 21 7. Declaratory relief is available pursuant to *28 U.S.C. 2201 and 2202*.

22 **PARTIES**

- 23 8. Plaintiff is a natural person who resides in the city of Phoenix, Maricopa County,
 24 Arizona and is allegedly obligated to pay a debt and is a "consumer" as that term
 25 is defined by *15 U.S.C. 1692a(3)*.

1 9. Defendant is a national company with a business office in Houston, Harris Count,
2 Texas.

3 10. Defendant uses instrumentalities of interstate commerce or the mails in any
4 business the principal purpose of which is the collection of any debts, or who
5 regularly collects or attempts to collect, directly or indirectly, debts owed or due
6 or asserted to be owed or due another and is a "debt collector" as that term is
7 defined by *15 U.S.C. § 1692a(6)*.

8 **FACTUAL ALLEGATIONS**

9 11. Defendant constantly and continuously places collection calls to Plaintiff seeking
10 and demanding payment for an alleged consumer debt.

11 12. Defendant contacted a third party more than once and disclosed the nature and
12 existence of the alleged consumer debt (see letter from Plaintiff's father attached
13 hereto as Exhibit "A").

14 13. Defendant failed to provide Plaintiff with a 30 day validation notice.

15 **COUNT I**

16 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

17 14. Defendant violated the FDCPA based on the following:

- 18 a. Defendant Violated *§1692b(1)* of the FDCPA by contacting a third party
19 and failing to identify themselves and failing to state that collector is
20 confirming or correcting location information.
- 21 b. Defendant Violated *§1692b(2)* of the FDCPA by contacting a third party
22 and stating that Plaintiff owes a debt.
- 23 c. Defendant Violated *§1692b(3)* of the FDCPA by contacting a third party
24 more than once.
- 25 d. Defendant Violated *§1692c(b)* of the FDCPA by communicating with

1 anyone except the consumer, consumer's attorney, or credit bureau
2 concerning the alleged debt.

3 e. Defendant Violated §1692d of the FDCPA by engaging in conduct the
4 natural consequence of which is to harass, oppress, and abuse Plaintiff.

5 f. Defendant Violated §1692d(5) of the FDCPA by causing a telephone to
6 ring and engaging Plaintiff repeatedly and continuously with the intent to
7 annoy, abuse, and harass.

8 g. Defendant violated §1692d(6) of the FDCPA by placing telephone calls
9 without meaningful disclosure of callers identity.

10 h. Defendant violated §1692e(10) of the FDCPA by engaging in deceptive
11 means to collect a debt or obtain information about a consumer.

12 i. Defendant violated §1692e(11) of the FDCPA by contacting Plaintiff and
13 failing to state that they are a debt collector and any information will be
14 used for that purpose.

15 j. Defendant violated §1692f of the FDCPA by engaging in unfair practices
16 and unconscionable means to collect or attempt to collect an alleged debt.

17 k. Defendant violated §1692g(a)(1-5) of the FDCPA by failing to provide
18 appropriate notice of the debt within 5 days after the initial communication
19 including: (1) the amount of the debt; (2) the name of the creditor to whom
20 the debt is owed; (3) a statement that unless the consumer, within 30 days
21 after receipt of the notice, disputes the validity of the debt, or any portion
22 thereof, the debt will be assumed to be valid by the debt collector; (4) a
23 statement that if the consumer notifies the debt collector in writing within
24 the 30-day period that the debt, or any portion thereof, is disputed, the debt
25 collector will obtain verification of the debt or a copy of a judgment

1 against the consumer and a copy of such verification or judgment will be
2 mailed to the consumer by the debt collector; and (5) a statement that, upon
3 the consumer's written request within the 30-day period, the debt collector
4 will provide the consumer with the name and address of the original
5 creditor, if different from the current creditor

6 15. As a direct and proximate result of one or more or all of the statutory violations
7 above Plaintiff has suffered emotional distress (see Exhibit "B").

8 WHEREFORE, Plaintiff, RICHARD KNAEBLE, respectfully requests judgment
9 be entered against Defendant, BRACHFELD & ASSOCIATES, for the following:

10 16. Declaratory judgment that Defendant's conduct violated the Fair Debt Collection
11 Practices Act,

12 17. Statutory damages pursuant to the Fair Debt Collection Practices Act, *15 U.S.C.*
13 *1692k*,

14 18. Actual damages,

15 19. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection
16 Practices Act, *15 U.S.C. 1692k*

17 20. Any other relief that this Honorable Court deems appropriate.

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DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, RICHARD KNAEBLE, demands a jury trial in this cause of action.

RESPECTFULLY SUBMITTED,

DATED: February 12, 2009

KROHN & MOSS, LTD.

By: /s/ Ryan Lee

Ryan Lee

Attorney for Plaintiff

VERIFICATION OF COMPLAINT AND CERTIFICATION

STATE OF ARIZONA

Plaintiff, RICHARD KNAEBLE, states as follows:

1. I am the Plaintiff in this civil proceeding.
2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.
3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law.
4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
5. I have filed this Complaint in good faith and solely for the purposes set forth in it.
6. Each and every exhibit I have provided to my attorneys which has been attached to this Complaint is a true and correct copy of the original.
7. Except for clearly indicated redactions made by my attorneys where appropriate, I have not altered, changed, modified or fabricated these exhibits, except that some of the attached exhibits may contain some of my own handwritten notations.

Pursuant to 28 U.S.C. § 1746(2), I, RICHARD KNAEBLE, hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

DATE: 2-13-09

R. J. Knaeble
RICHARD KNAEBLE

EXHIBIT A

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From: richard knaeble <sixbear77@yahoo.com>
To: Richard Knaeble <rjk@mmker.com>
Date: 2/3/2009 12:01:07 PM
Subject: More collections

RJ

Got a call from Veronica at Brachfeld Associates (attorneys) for collections on a Capitol One bill for \$1,022.00. She's at 713/579-7000, ex. 6043.

DAD

EXHIBIT B

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I have suffered from the following due to, or made worse by, the actions of the Defendant's debt collection activities:

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|---|------------|-----------|
| 1. Sleeplessness | <u>YES</u> | NO |
| 2. Fear of answering the telephone | <u>YES</u> | NO |
| 3. Nervousness | <u>YES</u> | NO |
| 4. Fear of answering the door | <u>YES</u> | NO |
| 5. Embarrassment when speaking with family or friends | <u>YES</u> | NO |
| 6. Depressions (sad, anxious, or "empty" moods) | <u>YES</u> | NO |
| 7. Chest pains | YES | <u>NO</u> |
| 8. Feelings of hopelessness, pessimism | <u>YES</u> | NO |
| 9. Feelings of guilt, worthlessness, helplessness | <u>YES</u> | NO |
| 10. Appetite and/or weight loss or overeating and weight gain | YES | <u>NO</u> |
| 11. Thoughts of death, suicide or suicide attempts | YES | <u>NO</u> |
| 12. Restlessness or irritability | <u>YES</u> | NO |
| 13. Headache, nausea, chronic pain or fatigue | <u>YES</u> | NO |
| 14. Negative impact on my job | <u>YES</u> | NO |
| 15. Negative impact on my relationships | <u>YES</u> | NO |

Other physical or emotional symptoms you believe are associated with abusive debt collection activities: I am constantly being told by my father that the creditors keep calling the house & he gets mad and yells at me and tells me to take care of it & ~~and~~ have them quit calling the house. I have been afraid to go home just to avoid being yelled at & have stayed out late in hopes that dad is sleeping when I get home. I also don't want to wake up in fear that dad hasn't gone to work & he will ask me to take care of them again.

Pursuant to 28 U.S.C. § 1746(2), I hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Dated: 2-13-09

R. J. Knaeble
Signed Name

Richard J. Knaeble
Printed Name